



Refugee Protection Situation Report Volume 2, Issue No.8 of 2018

Period: 1st July – 31st July

Date: 20th August, 2018

Introduction

This report focuses on refugees and asylum seekers' protection situation in Kenya. Specifically, it provides information on arrest and arraignment of cases at police stations and courts of law respectively in the period indicated above. It also addresses access to territory for refugees and asylum seekers across various border entry points in Kenya. The report is produced by the Refugee Consortium of Kenya (RCK) on a monthly basis with the financial support of the Human Security Division of the Federal Department of Foreign Affairs of the Swiss Confederation, Sigrid Rausing Trust, United Nations High Commissioner for Refugees (UNHCR) and the United Nations Voluntary Fund for Victims of Torture (UNVFVT).

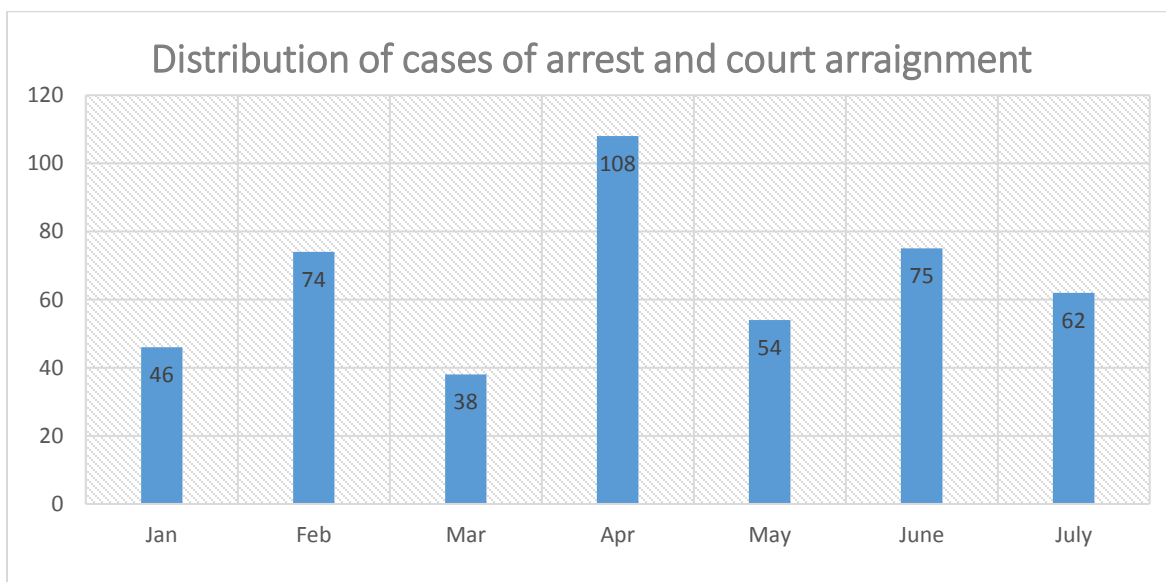
Data used for this report was collected by 9 RCK legal officers and 40 protection and border monitors. This was on a daily basis and was reinforced by information collected during legal interventions at police stations and courts of law. The geographical areas covered for detention monitoring included Dadaab, Garissa, Kakuma and Nairobi. Cross border movement data covered 12 entry points along the Kenyan border. These were Abdisugow, Amuma, Busia, Dajabula, Damajale, Degelema, Diif, El-Wak, Kitale, Kulan, Liboi and Malaba border points.

In the period under review, there was a decrease of arrest and arraignment cases recorded. The figure dropped from 75 cases in May to 62 cases in June. Fifty-one percent of the 62 cases related to the offence of unlawful presence contrary to section 53(1) (j) of the Kenya Citizenship and Immigration Act, 2011. The other forty-nine percent of the cases related to the offence of residing outside a designated area

contrary to section 25(f) of the Refugees Act, 2006. Fines and jail terms recorded in July were significantly higher than those recorded in June. The highest fines recorded in July was Ksh.200,000 as compared to Ksh.41,000 in June. The longest sentence imposed by the court in July was 12 months imprisonment as compared to six months imprisonment in June.

Arrests and Arraignment Cases

Sixty-two asylum and immigration cases were recorded in the period under review. This amounts to 17 percent decrease from the number of cases reported in June, 2018. The total number of cases recorded since January stands at 457, 74 percent of which related to the offence of unlawful presence contrary to section 53(1) (j) of the Kenya Citizenship and Immigration Act, 2011. The remainder of the cases (26%) related to the offence of residing outside a designated area contrary to section 25(f) of the Refugees Act, 2006. Sixty-five percent of the cases involved men while 23 percent of the cases involved women. Minors accounted for 12 percent of the cases since January 2018 with a ratio of 9 to 3 in favour of the boys. Graph 1 shows the distribution of cases handled by RCK since January 2018 while table 1 below provides a breakdown of the types of cases that RCK staff intervened in the month of July, 2018.



Graph 1: Distribution of cases of arrests and arraignment in courts recorded by RCK since January, 2018.

Summary of reports of arrests and arraignments

Place of Incident	Incident	Characteristics of PoCs	Status of Situation
Garissa	Arraignment: Residing outside a designated area without authorization	5 Somali nationals (3 adult males, 1 adult female and 1 minor male)	All the accused persons, except the minor, were convicted after they pleaded guilty. They received sentences of 3 months or payment of fines ranging from Ksh.10,000 to Ksh.20,000. The minor was discharged by the court.
	Arraignment: Unlawful presence	17 Somali nationals (10 adult males, 4 adult females and 3 minor males)	11 of the accused were convicted after they pleaded guilty. They received sentences ranging from 6 months to a year. In the alternative they were ordered to pay fines ranging from Ksh.50,000 to Ksh.200,000. Thereafter, the court ordered that they be deported back to Somalia. One accused adult male was discharged along with 2 minors. The cases against two adult females and one minor were yet to be concluded at the time of drafting this report.
Kakuma	Arraignment: Residing outside a designated area without authorization	17 individuals: 8 Burundi, 2 Congolese, 3 South Sudanese and 4 Somali (16 adult males and 1 adult female)	Of the 17 accused, 10 were convicted on their own plea of guilty. RCK mitigated on their behalf, Nine of the 10 were sentenced to serve a community service sentence while the other one was sentenced to 1 month in prison or payment of Ksh.5,000 fine. Six of the remaining 7 accused

			persons were discharged while the case against the last one is still on going in court.
Kisumu	Arrestment: Unlawful presence	3 Burundi nationals (2 adult males and 1 adult female)	The accused individuals were arraigned in court for unlawful presence. They were later released after RCK intervened on their behalf and presented proof of their refugee registration.
	Arrest: Residing outside a designated area without authorization	2 Congolese adult males	The pair was arrested while performing at a pub in the area. RCK officers intervened and secured their release from police custody.
Mandera	Arrestment: Unlawful presence	9 Somali nationals (6 adult males and 3 adult females)	All the accused were convicted after they pleaded guilty. They told the court that they had come into Kenya to look for economic opportunities. They received sentences ranging from 3 months to a year or payment of a fine in the alternative. The fines ranged from Ksh.40,000 to Ksh.100,000. They all paid the fines and were to be deported back to Somalia as per the orders of the court.
Malaba	Arrest: Residing outside a designated area without authorization	5 Burundi nationals (1 adult male and 4 adult females)	The five were released after an intervention from an RCK officer. They were arrested as they were heading from Kakuma to attend a relative's burial ceremony.
	Arrest: Unlawful presence	1 Burundi adult male	The Burundi national was released after an officer from RCK intervened. The RCK officer interviewed him and discovered

			that he was seeking asylum. He was escorted to Kakuma for registration.
Wajir	Arraignment: Residing outside a designated area without authorization	1 Somali adult male	The case against the accused was not concluded by the time of writing this report. However, RCK is representing the client.
	Arraignment: Unlawful presence	2 Somali adult males	The accused were convicted on their plea of guilty. They told the court that they came to Kenya to visit relatives and pursue economic opportunities. They received sentences ranging from 3 months to 6 months or payment of a fine in the alternative. The fines ranged from Ksh.41,000 to Ksh.51,000. The court ordered they be deported after they serve the prison sentence or pay the fines.

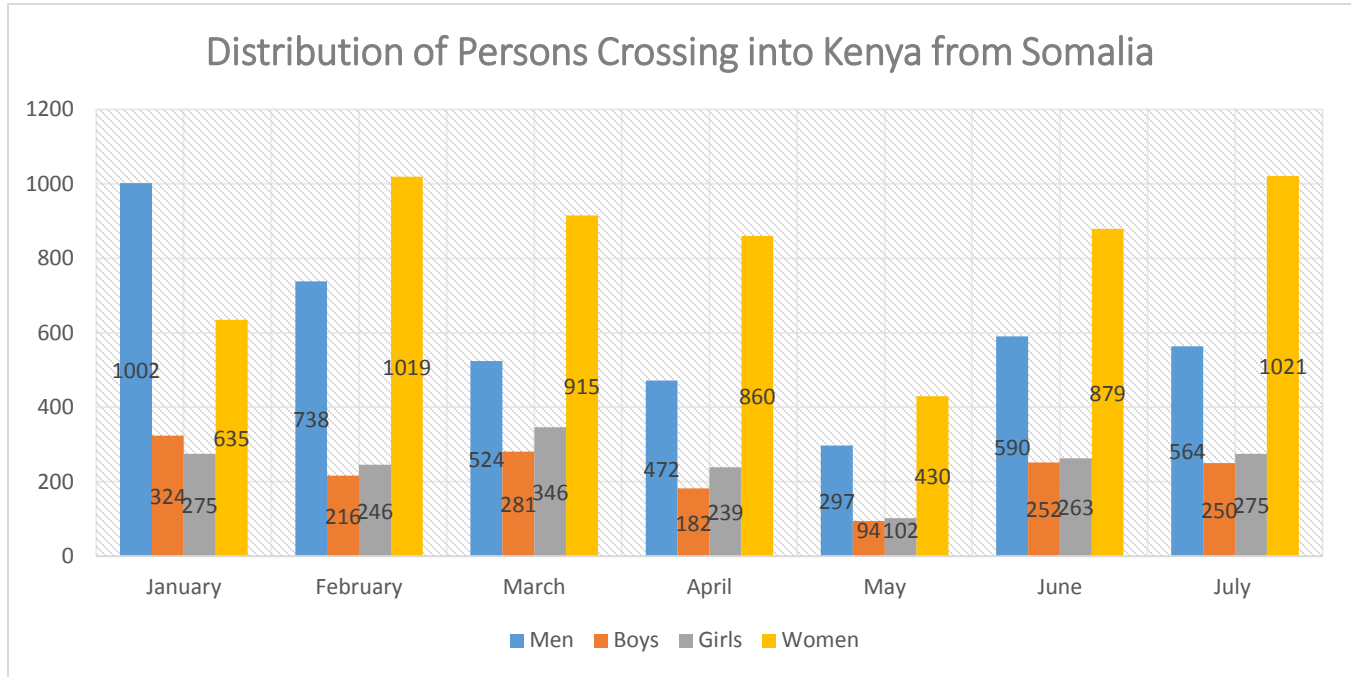
Table 1: Breakdown of arrest and arraignment cases

Access to Territory

Dadaab

In the period under review, the number of foreign nationals entering Kenya from Somalia was 2110. This represents a 6 percent increase compared to the figure recorded in June, 2018. This increase was largely occasioned by increased mobility due to the improvement of the security situation along the Kenya-Somali border. Seventy-five percent of the 2110 individuals were adults (27% men & 48% women) while 25 percent were minors (12% boys & 13% girls). The total figure for border entry observations since January, 2018 stands at 13,291. Graph 2 below shows the distribution of the persons entering Kenya from Somalia desegregated broadly by age and gender while figure1 below shows the distribution of border entry observations since January, 2018. It should be noted that those accessing Kenyan territory are not

necessarily newly arrived asylum seekers and includes refugees that left Dadaab for Somalia for whatever reason.



Graph 2: Distribution of persons entering Kenya from Somalia by age and gender.

NUMBERS OF BORDER ENTRIES PER LOCATION

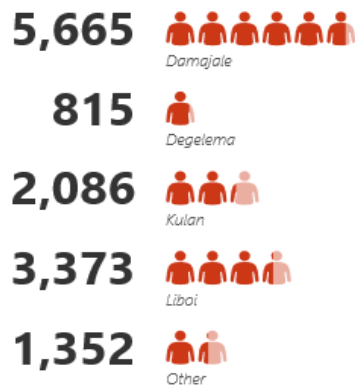


Figure 1: Number of border entries since January, 2018

Damajale recorded the most entries among the areas that RCK has been monitoring since January, 2018. Border entries observed at this point accounted for 43 percent of all the border entries recorded. This was followed by Liboi (25%), Kulan (16%) and Degelema (6%). These four locations are near the Dadaab Refugee Camp complex which could explain the high levels of border entry observations. The other locations include Abdisugow, Amuma, Diif and El-Wak which accounted for 10 percent of the entries.

The individuals observed crossing into Kenya were Somali nationals. They cited their reasons for flight as insecurity arising from militia groups controlling the stated areas of origin and political differences between them and the ruling class therein.

Kitale

There were 46 foreign nationals that accessed Kenyan territory through this location. Twenty-seven of them were adult males while 19 were adult females. Twenty-eight of them were Burundi nationals, 16 were Congolese, one was Rwandan and one was Ugandan. They were facilitated to move to Kakuma to register for asylum.

Conclusion

This report evaluated access to justice and territory for refugees and asylum seekers in Kenya. Despite the arrests and court arraignments, the sentences that were ordered were in line with the law. The defendants were allowed to seek legal counsel from RCK officers on site. Moreover, there is evidence that asylum seekers did not meet any physical or legal barriers in accessing Kenyan territory in the areas that RCK officers monitored in the month of July.

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